

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

William and Maureen Anello
362 Alba Court
West Grove, PA 19390
Chester County, Pennsylvania

Plaintiffs
v.

**Indian River School District
Serve On:
Susan S. Bunting (officially)
31 Hoosier St.
Selbyville, DE 19975
Sussex County, Delaware**

and

**Susan S. Bunting (officially)
Superintendent of Schools
Indian River School District**

Defendants

* * * * *

Civil Action No. _____

07-668-

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2007 OCT 24 AM 10:56

**COMPLAINT FOR MONETARY DAMAGES AND
DECLARATORY AND INJUNCTIVE RELIEF**

JURISDICTION

This Honorable Court has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. §794 *et seq.*, 42 U.S.C. § 1983 (“Section 1983”) and 28 U.S.C. §§1331 and 1343. This Court has pendant jurisdiction pursuant to 14 Del. C. § 3100 *et seq.* Plaintiffs bring this Complaint seeking review of a decision of a Delaware Department of Education Due Process Hearing Panel, rendered on August 1, 2007, and transmitted by the Panel to the parties on August 1, 2007.

PARTIES

1. William and Maureen Anello (“the parents”) have a daughter with a specific learning disability as defined by IDEA and § 504 and all of whom, at all times relevant to this action, resided in the jurisdiction of the Indian River School District in Sussex County, Delaware. The parents, requested an impartial due process hearing §1415(f) (1) (A), conducted by the state educational agency DE DP 07-20, to have educational issues resolved. Having received the finding and decision in that hearing, the parents, as aggrieved parties, have the right to commence suit in federal court: “Any party aggrieved by the findings and decision made [by the hearing panel] shall have the right to bring a civil action with respect to the complaint.” §1415(i) (2) (A); see also §1415(i) (1).

2. Indian River School District (“IRSD”) is a local educational agency as defined by 20 U.S.C. §1401 and is responsible for complying with the federal law and state law with respect to the provision of a free appropriate public education (“FAPE”) to disabled children residing within the jurisdiction of their district.

3. Susan S. Bunting (the “Superintendent”) is the Superintendent of the local educational agency in charge of providing a free appropriate public education to disabled children residing in the Indian River School District. She is responsible for ensuring that the local educational agency acts in accordance with the law in the delivery of special education and related services to disabled children within the agency’s jurisdiction. She is sued in her official capacity.

STATEMENT OF FACTS

4. The issues in this case were originally decided by a Delaware Department of Education due process hearing panel and appealed by plaintiff in Family Court of the State of Delaware in and for Sussex County. On January 19, 2007 the Honorable Kenneth M. Millman issued an order reversing the panel’s decision and remanded the case back to a due process education panel.

5. Parent’s daughter was identified as a disabled person under the American Disabilities Act § 504 during the 2002-2003 school year in the White Plains School District, (WPSD) New York, when she was in second grade.

6. Mr. & Mrs. Anello and their disabled child move from the WPSD, to Ocean View, Delaware and into IRSD during the summer of 2003.

7. On or before August 6th, 2003 Parents enrolled their daughter in Lord Baltimore Elementary School as a disabled 3rd grade student with a 504 plan developed to address her needs and ready for implementation for the 2003-2004 school year.

8. The district held a 504 meeting without the Parents to discuss the NY 504 plan on or before September 15, 2003.

9. The IRSD 504 team accepted the NY testing and NY 504 plan with the classroom accommodations on September 15, 2003 and agreed to continuation of 504 due to all listed disabilities.

10. There was no formal or informal testing performed by the IRSD prior to developing their own 504 plan which was offered to the Parents on September 22nd, 2003.

11. The IRSD 504 plan as presented to the parents for approval on September 22nd, 2003, had no related services provisions and lacked the majority of the NY 504 classroom accommodations the district had previously agreed to accept.

12. Parents concerned their daughter's disability would not be properly address in the IRSD plan requested the district evaluate their daughter on September 22nd, 2003. In response to the Parent's request, the district obtained a signed permission to evaluate.

13. On September 22, 2003, after Parents have originally disagreed to the IRSD plan presented, the IRSD 504 coordinator assigned the 3rd grade classroom teacher to monitor the daughter's academic performance for any signs indicating lack of appropriate progress or regression and directed her to report them to the 504 coordinator.

14. The district having already determined no related services were warranted, the 3rd grade teacher requested the Parents seek outside tutoring to address their daughter's poor performance in Math and Reading as she recorded them by grades on the first marking period mid-term progress report on October 2, 2003.

15. Parent initiated numerous conversations with the teacher to discuss their daughter's continued lack of progress, despite parent provided interventions thought the 1st and 2nd marking periods. On January 19, 2004 Parents initiated a meeting with the 504 team coordinator to discuss the lack of progress and review the 504 plan.

16. At the 504 meeting held on February 3, 2004, Maureen Anello made another request for evaluations and IRSD obtained a second signed permission to evaluate.

17. By letters dated on or about February 3rd and April 8th, 2004, the district altered the Parents their daughter was failing the regular education 3rd grade curriculum and was in danger of being retained.

18. Parents made third request on April 28, 2004 for evaluations.

19. On May 18, 2004, the district performed a psycho-educational assessment.

20. On June 11th, 2004, the district provided the Parents formal notice that they decided to deny their daughter promotion to the 4th grade due and would place her again in the 3rd grade for the 2004-2005 school year due to her failure to make sufficient progress towards the state standard and failure to achieve passing grades in the 2003-2004 school year.

21. The district did not provide the appropriate evaluations as mandated by federal and state regulations to determine whether or not Parents daughter's disability adversely affected her educational performance even though lack of progress was documented by her teacher though out the 2003-2004 school year.

22. At the end of the school year, during the June 14th, 2004, IDEA eligibility meeting, the district's psychologist reported the daughter's disabilities did adversely affect her education and the IRSD classified her as a student with a Learning Disability.

23. On July 9th, 2004, the district convened an IEP meeting at which time the district and the parent were to develop an IEP for the 2004-2005 school year.

24. On or about July 12, 2004, Parents contacted district's Supervisor of Special Education expressed concern with the IEP and she refused to review or revise the IEP for the 2004-2005 school year.

25. Parent formally rejected the district's IEP program and placement on or about July 21, 2004.

26. On or about August 20, 2004, Parents provided the district of their decision to unilaterally place their daughter in the Lighthouse Christian School.

27. On or about August 31, 2004, Parent filed a request for a due process hearing with the Dept. of Education and a due process hearing was held on January 20, 24, February 15, March 15, and 17, 2005.

28. The hearing panel issued a decision in favor of IRSD on June 30, 2005.

29. The Parents appeal the decision to Sussex County Family Court on September 27, 2005.

30. The Court reversed the panel's decision and the case was remanded to a due process educational panel for the purpose of determining if the district timely identified Gabby as a special needs student for the 2003-2004 school year, whether the district provided Gabbie with an appropriate IEP for the 2004-2005 school year and if the IRSD failed to satisfy either obligation, the panel shall decide an appropriate remedy.

31. A second due process hearing was held on May 24 and 30, 2007.

32. The hearing panel issued a split decision in favor of IRSD. The decision is dated August 1, 2007, and was transmitted to the parties by email on August 1, 2007.

ISSUES FOR JUDICIAL REVIEW

33. As the funding agency, IRSD had a duty to timely identify Parents' daughter as a learning disabled student and timely provide her with an Individual Education Program for the 2003-2004 school year. 20 U.S.C. § 1414(d) (4) (A) (i). IRSD failed to do so.

34. The IRSD as of September 22, 2003, first retained permission to evaluate and failed to provide all appropriate evaluations by qualified, trained and knowledgeable personnel necessary to evaluate the identified disabilities in a timely manner. 34 C.F.R. §300.531-300.536, see also 20 U.S.C. § 1414(d) (4) (A) (i). The Due Process Hearing Panel then erred by determining IRSD had no obligation to evaluate prior to February 3, 2004 when they treated the second permission to evaluate as if it was the first time parents requested "further" evaluations.

35. IRSD had an obligation to develop an Individual Education Program calculated to provide meaningful educational benefit under the common law standard of Rowley and Third Circuit Court for more *de-minus* benefit and ready for implementation by the beginning of the 2004-2005 school year. 20 U.S.C. § 1414(d) (2) (A). IRSD failed to

meet this obligation. The Due Process Hearing Panel erred by finding there was no requirement to have an Individual Education Program calculated to provide meaningful educational benefit in effect by the first day of the 2004-2005 school year. The Due Process Hearing Panel also erred when finding that the Individual Education Program in draft form was “a very good start that could provide meaningful educational benefit”.

36. The IRSD pre-determined placement prior to program development on June 11, 2004 and then developed a program to conform that placement on July 9, 2004.

37. By failing to develop an appropriate Individual Education Program, the IRSD failed to offer Parents daughter a free appropriate public education (FAPE) by the beginning of the 2004-2005 school year. The Parents thus had no choice but to place their daughter at Lighthouse Christian School.

38. The Due Process Hearing Panel erred in their decision by failing to apply the appropriate law either cases or statutes as they related to the parents’ issues for identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE).

39. The Due Process Hearing Panel erred by impeding many facts into their decision unsupported by testimony or any accepted evidence disclosures.

40. The Due Process Hearing Panel misinterpreted Federal Rules of Evidence # 401 and 702 thus prohibiting the Parents from presenting any evidence to support their claim of appropriate remedy and as such denied the parents right to due process. 20 U.S.C. §1415(f)(1)(A)

41. The Due Process Hearing Panel failed to include the position of the Parents including their major points of presentation. 20 U.S.C. §1415 (f)(1)(A)

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

- a. Enter a finding that Defendants did not offer a free appropriate public education to Plaintiffs daughter for the 2003-2004 school year because they failed to timely “Child Find”.
- b. Enter a finding that the 2004-2005 Individualized Education Program offered by the Defendants was not appropriately calculated and ready for implementation by the start of the school year.
- c. ORDER the Defendant provide monetary compensatory education for the denial of free appropriate public education during the 2003-2004 school year so as to provide tuition and all related costs of an intensive remedial private education and continuing until such time as Plaintiffs’ daughter’s achievement is commensurate with her age appropriate peers
- d. ORDER the Defendant to reimburse the Parents for the tuition and

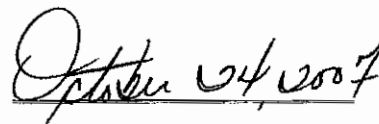
related expenses of the Lighthouse Christian School for the 2004-2005 school year for their failure to offer free appropriate public education through an Individualized Educational Program calculated to provide meaningful educational benefit.

e. ORDER the Defendants to reimburse the Parents for the costs of attorneys' fees, expert witness fees, and other litigation expenses related to the administrative hearing and this action; and

f. ORDER such other and further relief as the nature of this case and justice require.

RESPECTFULLY SUBMITTED,


Maureen Anello
Pro Se litigant
362 Alba Court
West Grove, PA 19309
(484) 667-8162

Date: 

- 07-668 -

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Maureen & William Anello
362 Alba Court
West Grove, PA 19390

(b) County of Residence of First Listed Plaintiff Chester Co., PA
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Pro se litigant Att (484) 667-8122

DEFENDANTS Indian River School District
Susan Bunting (officially) 31 Hoosier St.
Selbyville, DE 19975

County of Residence of First Listed Defendant Sussex
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) James McMackin, III
Morris James, LLP
500 Delaware Ave, Suite 1500, Wilmington DE 19801

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Mod. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 28 USC 341b <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
504 and 20 USC § 1400 et. seq. § 28 USC § 1654

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 128,500.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

Winkelman v. Parma City S.D. US Supreme Court
 (See instructions): JUDGE Kennedy DOCKET NUMBER 05-983

DATE 10/24/2007

SIGNATURE OF ATTORNEY OF RECORD Maureen Anello pro se litigant

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

Peter T. Dalleo
CLERK

LOCKBOX 18
844 KING STREET
U.S. COURTHOUSE
WILMINGTON, DELAWARE 19801
(302) 573-6170

RE: C.A.# 07-668

CASE CAPTION: _____ v. _____

ACKNOWLEDGMENT OF RECEIPT FOR F.R.Civ.P. 4

I hereby acknowledge receipt of a copy of Rule 4 (Summons) of the Federal Rules of Civil Procedure, and understand that it is my responsibility to make service of process on defendants in accordance with this rule.

Date Received 10/24/07
by Plaintiff: _____

Signed: [Signature]
Pro Se Plaintiff

Date Received 10/24/07
by Clerk's office: _____

Signed: [Signature]
Deputy Clerk

Note: If you received Federal Rule 4 by mail, please sign this receipt and return it to:

Clerk
U.S. District Court
844 N. King Street
Lockbox 18
Wilmington, DE 19801

If applicable, Rule 4 mailed to plaintiff:

Date mailed

By Deputy Clerk

cc: Docketing Clerk

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. - 0 7 - 6 6 8

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

10/24/2007
(Date forms issued)


(Signature of Party or their Representative)

Maurice Anello
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action